

REMARKS

Pending Claims

Claims 53-63, 65 and 70-74 remain pending.

Amendments to the Claims

Applicants have amended claim 53, lines 5, 11 and 14 to change a typographical error. Specifically, "herein" has been changed to --wherein-- in each of the noted lines of the claim. Entry of the amendments to the claim to correct the typographical errors is respectfully requested.

Consent of Assignee

A Consent of the Assignee is submitted herewith. The application has been assigned to Elpida Memory, Inc., which is the assignee of the entire interest.

Discussion of Errors Supporting the Filing of Reissue Application

This Reissue application is a continuation of the parent Reissue application, which has matured into RE 37,593. This continuation application is a broadening reissue application, as was the parent reissue application.

An error was identified in the parent reissue application which supported the filing of the reissue application. In the prosecution of the parent reissue application, an inventorship error and an additional error were identified. The error supporting the filing of the parent

reissue application was corrected in the parent reissue application. Specifically, the error in the parent reissue application that was identified and corrected was that patentees claimed less than they had a right to claim in the patent because they had not presented claims directed to the embodiment of the invention shown in Figures 20A -36C. The error was corrected by submitting new claims.

The inventorship error in the original patent was identified in the parent reissue application and corrected. Applicants refer to the Supplemental Declaration filed in the parent continuation application on June 12, 2000. In the original patent, an error was determined in that one of the named inventors, Jun Ito, did not contribute to any claims of the original patent. This was corrected by naming him as an inventor in the reissue patent since he did contribute to claims that were added by the reissue patent. Note that merely comparing the inventors of the reissue patent with those of the original patent does not reveal that an error in inventorship was identified and corrected in the parent reissue application.

The additional error that was identified in the parent reissue application that could have been identified to support the filing of the parent reissue application was not corrected in the parent reissue application. Specifically, the additional error in the parent reissue application was that the patentees claimed less than they had a right to claim in the patent with respect to the embodiment of the invention shown in Figures 12A – 15C. To correct this error, claims 72-82, 84 and 89-93 were submitted in the parent application. However, these claims were cancelled after Allowance by a Rule 312 Amendment and resubmitted in the present continuation application.

Supplemental Declaration

Submitted herewith is a Supplemental Declaration signed by the inventors K. Ito and Y. Nakagome. Applicants note that the deleted inventors do not need to sign a Reissue oath or Declaration. The Reissue Declaration must be signed by the correct inventive entity and since the deleted inventors are not part of the corrected inventive entity, the deleted inventors do not need to sign the Supplemental Declaration. *See* MPEP 1412.04,(II), last paragraph.

The Supplemental Declaration sets forth an error supporting the filing of the present reissue application. The error is that the patentees claimed less than they had a right to claim in the patent. Specifically, the patentee had a right to claim the embodiment of the invention shown in Figures 12A – 15C. The pending claims are submitted to correct the error in which patentees claimed less than they had a right to claim in the patent. That is, to correct the error, Applicants submit claims 53-63, 65 and 70-74 (which correspond to canceled claims 72-82, 84 and 89-93 of the parent reissue application). Accordingly, the error set forth in the Supplemental Declaration submitted in the present application is different from that supporting the filing of the parent reissue application, as required by 37 CFR 1.175(e).

Support for the claims is set forth in the Supplemental Declaration.

The Examiner states in the Office Action that the Declarations filed on September 9, 2003 are just related to inventorship errors. However, it is noted that MPEP 1412.04(II), first paragraph, states that the failure to name the correct inventive entity is an error in the patent which is correctable under 35 U.S.C. §251. The Examiner states that the inventorship error

of the present application is “not an error which can support the filing of a Reissue application if it could have been corrected by filing a Request for Certificate of Correction. Applicants recognize from MPEP 1412.04(II), first paragraph, lines 1-3 that the appropriate vehicle to correct inventorship is a Reissue application where the provisions of 35 U.S.C. §256 and 37 C.F.R. §1.324 do not apply. These provisions do not apply in the present reissue application since the present application is a continuation reissue application. That is, the original patent was surrendered and it is no longer possible to file a Certificate of Correction in the original patent. Further, a Certificate of Correction does not allow applicants to submit broadened claims, as in the present application.

Conclusion

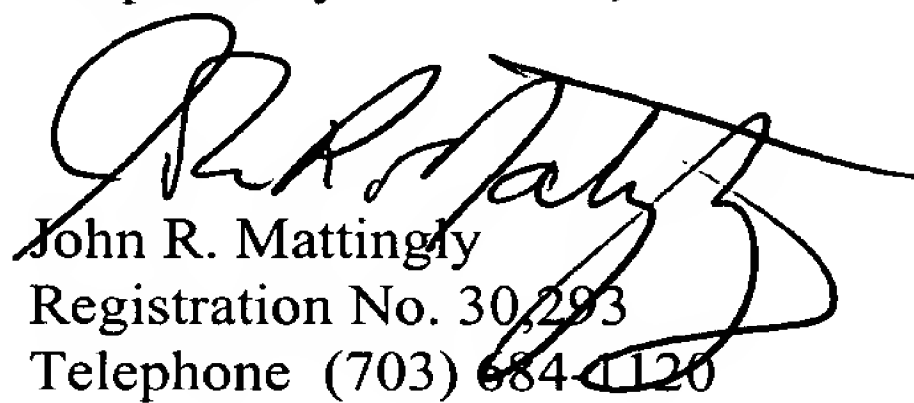
Applicants provide the Supplemental Declaration in order to ensure that the present application is passed to allowance and issue by identifying an error that supports the filing of the present continuation application that is different from the error identified in the parent application. However, Applicants respectfully assert that the inventorship error was sufficient in this regard. The Supplemental Declaration should not have been required for the foregoing reasons. Applicants remind the Examiner that the present application has been in condition for allowance since October 20, 2003. Accordingly, applicants request that the Examiner expedite allowance of the present application so that the Reissue patent may issue without further delay.

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Applicants earnestly solicit that the present reply places the application in condition to receive a Notice of Allowance, and therefore, mailing of a Notice of Allowance to Applicants is respectfully requested.

Respectfully submitted,



John R. Mattingly
Registration No. 30,293
Telephone (703) 684-1120

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